

1 JUDGE CHACHKIN: It will be so marked.

2 (The document referred to was
3 marked for identification as
4 Pathfinder Exhibit No. 47.)

5 MR. GUZMAN: Pathfinder Exhibit No. 48 is a copy
6 of a decision entered by the Circuit Court for the County of
7 Kalamazoo in File No. 594-3603MZ. The caption of this case
8 is David L. Hicks, Plaintiff versus Edward J. Sachley III,
9 Individually, and others.

10 JUDGE CHACHKIN: It will be so marked.

11 (The document referred to was
12 marked for identification as
13 Pathfinder Exhibit No. 48.)

14 MR. GUZMAN: Pathfinder Exhibit No. 49 is a memo
15 from Bob Watson to Dave Hicks dated August 21, 1996; one
16 page.

17 JUDGE CHACHKIN: It will be so marked.

18 (The document referred to was
19 marked for identification as
20 Pathfinder Exhibit No. 49.)

21 MR. GUZMAN: Pathfinder Exhibit No. 50 is an
22 amendment to the Joint Sales Agreement dated effective
23 January 1, 1997; three pages.

24 JUDGE CHACHKIN: It will be so marked.

25 //

1 (The document referred to was
2 marked for identification as
3 Pathfinder Exhibit No. 50.)

4 MR. GUZMAN: Pathfinder Exhibit No. 51 is a memo
5 from Bob Watson to Dave Hicks dated January 3, 1997; one
6 page.

7 JUDGE CHACHKIN: It will be so marked.

8 (The document referred to was
9 marked for identification as
10 Pathfinder Exhibit No. 51.)

11 MR. GUZMAN: Pathfinder Exhibit No. 52 is a memo
12 from Lisa to a number of people: Steve, Dick, Dave, Brad,
13 Trudy and Dave, dated June 23, 1997.

14 JUDGE CHACHKIN: It will be so marked.

15 (The document referred to was
16 marked for identification as
17 Pathfinder Exhibit No. 52.)

18 MR. GUZMAN: Four pages in that exhibit, Your
19 Honor.

20 JUDGE CHACHKIN: All right.

21 MR. GUZMAN: Pathfinder Exhibit No. 53 is entitled
22 Settlement and Stock Purchase Agreement. There are 14 pages
23 in this exhibit, which is dated August 8, 1997.

24 JUDGE CHACHKIN: The document will be so marked.

25 //

1 (The document referred to was
2 marked for identification as
3 Pathfinder Exhibit No. 53.)

4 MR. GUZMAN: Pathfinder Exhibit No. 54 is a letter
5 from Robert Watson to Robert Jamiesson, J-A-M-I-E-S-S-O-N,
6 dated August 26, 1997; one page.

7 JUDGE CHACHKIN: It will be so marked.

8 (The document referred to was
9 marked for identification as
10 Pathfinder Exhibit No. 54.)

11 MR. GUZMAN: Pathfinder Exhibit No. 55 is a letter
12 from Bob Watson to Dave Hicks dated September 24, 1997; one
13 page.

14 JUDGE CHACHKIN: It will be so marked.

15 (The document referred to was
16 marked for identification as
17 Pathfinder Exhibit No. 55.)

18 MR. GUZMAN: Pathfinder Exhibit 56 is entitled
19 Hicks Chart of Accounts. There are five pages to this
20 exhibit.

21 JUDGE CHACHKIN: It will be so marked.

22 (The document referred to was
23 marked for identification as
24 Pathfinder Exhibit No. 56.)

25 MR. GUZMAN: Pathfinder Exhibit 57 is entitled

Heritage Reporting Corporation
(202) 628-4888

1 Pathfinder Chart of Accounts. There are five pages to this
2 exhibit.

3 JUDGE CHACHKIN: It will be so marked.

4 MR. GUZMAN: Pathfinder Exhibit 57 is entitled
5 Pathfinder Chart of Accounts. There are 24 pages to this
6 exhibit.

7 JUDGE CHACHKIN: It will be so marked.

8 (The document referred to was
9 marked for identification as
10 Pathfinder Exhibit No. 57.)

11 MR. GUZMAN: Pathfinder Exhibit 58 is a summons
12 and complaint in the Ninth Judicial Circuit in State Court
13 in the State of Michigan. The case caption is Plaintiff,
14 Crystal Radio Group, Inc. and others. The Defendant is Eric
15 B. Brown, Jr., and the law firm of Miller, Canfield, Paddock
16 and Stone. This complaint is dated April 30, 1998.

17 JUDGE CHACHKIN: It will be so marked.

18 (The document referred to was
19 marked for identification as
20 Pathfinder Exhibit No. 58.)

21 MR. GUZMAN: Pathfinder Exhibit No. 59 is a fax
22 from Jeff Timmons to Bob Watson and accompanying material,
23 dated July 13, 1998; two pages.

24 JUDGE CHACHKIN: It will be so marked.

25 //

1 (The document referred to was
2 marked for identification as
3 Pathfinder Exhibit No. 59.)

4 MR. GUZMAN: Pathfinder Exhibit No. 60 is a letter
5 from E. Robert Galasky to Mr. Grant Grueh and Ms. Sharon
6 Woods dated September 8, 1998;

7 JUDGE CHACHKIN: It will be so marked.

8 (The document referred to was
9 marked for identification as
10 Pathfinder Exhibit No. 60.)

11 MR. GUZMAN: Pathfinder Exhibit No. 61 is an
12 operating agreement of Hicks Broadcasting of Indiana LLC; 26
13 pages in this exhibit.

14 JUDGE CHACHKIN: It will be so marked.

15 (The document referred to was
16 marked for identification as
17 Pathfinder Exhibit No. 61.)

18 MR. GUZMAN: Pathfinder Exhibit 62 is another
19 draft operating agreement of Hicks Broadcasting of Indiana
20 LLC; 20 pages in this exhibit.

21 JUDGE CHACHKIN: It will be so marked.

22 (The document referred to was
23 marked for identification as
24 Pathfinder Exhibit No. 62.)

25 MR. GUZMAN: Pathfinder Exhibit No. 63 is yet

1 another draft operating agreement of Hicks Broadcasting of
2 Indiana LLC; 18 pages in this exhibit.

3 JUDGE CHACHKIN: It will be so marked.

4 (The document referred to was
5 marked for identification as
6 Pathfinder Exhibit No. 63.)

7 MR. GUZMAN: Pathfinder Exhibit 64, another draft
8 operating agreement of Hicks Broadcasting of Indiana LLC; 11
9 pages in this exhibit.

10 JUDGE CHACHKIN: It will be so marked.

11 (The document referred to was
12 marked for identification as
13 Pathfinder Exhibit No. 64.)

14 MR. GUZMAN: Pathfinder Exhibit 65, yet another
15 draft operating agreement of Hicks Broadcasting of Indiana
16 LLC; 24 pages in this exhibit.

17 JUDGE CHACHKIN: It will be so marked.

18 (The document referred to was
19 marked for identification as
20 Pathfinder Exhibit No. 65.)

21 JUDGE CHACHKIN: Are you going to get to the real
22 thing one of these days?

23 MR. GUZMAN: I believe that's in evidence, Your
24 Honor, under Mass Media Bureau Exhibits.

25 But the final draft operating agreement of Hicks

Heritage Reporting Corporation
(202) 628-4888

1 Broadcasting of Indiana LLC is Pathfinder Exhibit 66; 18
2 pages.

3 JUDGE CHACHKIN: It will be so marked.

4 (The document referred to was
5 marked for identification as
6 Pathfinder Exhibit No. 66.)

7 MR. GUZMAN: Pathfinder Exhibit 67 is a diagram,
8 undated; one page.

9 JUDGE CHACHKIN: It will be so marked.

10 (The document referred to was
11 marked for identification as
12 Pathfinder Exhibit No. 67.)

13 MR. GUZMAN: Pathfinder Exhibit 68 are handwritten
14 notes, undated; one page.

15 JUDGE CHACHKIN: It will be so marked.

16 (The document referred to was
17 marked for identification as
18 Pathfinder Exhibit No. 68.)

19 MR. GUZMAN: Pathfinder Exhibit 69 are handwritten
20 notes; two pages that bear the Bates label Hicks 720 and
21 721. These are undated.

22 JUDGE CHACHKIN: They will be so marked.

23 (The document referred to was
24 marked for identification as
25 Pathfinder Exhibit No. 69.)

1 MR. GUZMAN: Pathfinder Exhibit 70 is the
2 employment file and accompanying material for Steve V.
3 Kline. There are nine pages in this exhibit.

4 JUDGE CHACHKIN: It will be so marked.

5 (The document referred to was
6 marked for identification as
7 Pathfinder Exhibit No. 70.)

8 MR. GUZMAN: Pathfinder Exhibit 71 is a letter
9 from David Hicks to John Booth dated September 2, 1993.

10 JUDGE CHACHKIN: It will be so marked.

11 (The document referred to was
12 marked for identification as
13 Pathfinder Exhibit No. 71.)

14 MR. GUZMAN: Pathfinder Exhibit 73 is a Radio
15 Program License Agreement.

16 JUDGE CHACHKIN: Seventy what? Where is 72?

17 MR. GUZMAN: Seventy-three, Your Honor.

18 JUDGE CHACHKIN: What was 72?

19 MR. GUZMAN: Oh, pardon me. I skipped 72.

20 Pathfinder Exhibit 72 is a letter from Alan
21 Campbell, it's a memorandum rather from Alan Campbell to
22 John Quale dated August 17, 1973 -- 1993. Excuse me.

23 JUDGE CHACHKIN: It will be so marked.

24 (The document referred to was
25 marked for identification as

1 Pathfinder Exhibit No. 72.)

2 MR. GUZMAN: Pathfinder Exhibit 73 is the Radio
3 Program License Agreement dated February 8, 1996; 14 pages.

4 JUDGE CHACHKIN: It will be so marked.

5 (The document referred to was
6 marked for identification as
7 Pathfinder Exhibit No. 73.)

8 MR. GUZMAN: Pathfinder Exhibit 74 is one page.
9 It's a fax transmittal sheet from Steve Kline to Dave Hicks
10 dated March 14th.

11 JUDGE CHACHKIN: The document will be so marked.

12 (The document referred to was
13 marked for identification as
14 Pathfinder Exhibit No. 74.)

15 MR. GUZMAN: And those are all the exhibits that
16 we propose to identify at this time, Your Honor.

17 JUDGE CHACHKIN: Do you propose to refer to the
18 Bureau exhibits at any time?

19 MR. GUZMAN: From time to time, Your Honor. In
20 fact, we'll do that where possible so as to avoid--

21 JUDGE CHACHKIN: Okay. All right.

22 CROSS-EXAMINATION

23 BY MR. GUZMAN:

24 Q Good afternoon, Mr. Watson.

25 Let's begin with some of your background.

1 Briefly, could you describe for us your education?

2 A I have a Bachelors in Business Administration
3 Degree with a major in accounting from Eastern Michigan
4 University.

5 Q And when did you receive this degree?

6 A 1991.

7 Q Pardon me?

8 A In 1991.

9 Q You received your degree in 1991?

10 A I'm sorry. 1971.

11 (Laughter.)

12 Q All right. You packed a lot into eight brief
13 years or seven brief years.

14 A 1971.

15 Q All right. Now, are you a CPA as well?

16 A Yes, I am.

17 Q When did you receive your CPA?

18 A In 1994.

19 Q You mean 1974?

20 A 1974.

21 (Laughter.)

22 Q All right. Terrific.

23 Now, after you received your initial undergraduate
24 degree, did you become to be employed?

25 A Yes, I did.

1 Q Where was that, please?

2 A At that time I went to work for a company called
3 Touche Ross & Company in Detroit. They're now know as
4 Deloitte & Touche, I think. They merged a couple of times.

5 Q All right. If I heard your earlier testimony
6 correctly, you began with Pathfinder in 1978; is that right?

7 A That's correct.

8 Q So what did you do between 1974 and 1978?

9 A Well, I worked for -- again, I worked for Touche
10 Ross right out of college, and then I went -- I left their
11 firm and went to work in South Bend for a company called
12 Ernst & Ernst, now referred to Ernst & Young.

13 Q Ernst & Ernst as it was then, is that an
14 accounting firm?

15 A Yes. They were one of the -- Touche Ross and
16 Ernst & Ernst were at that time two of the Big Eight. I
17 think there is only six of them, called the Big Six left.

18 Q Now, you've previously testified that currently
19 for Pathfinder you hold the positions of chief financial
20 officer, secretary and treasurer; is that correct?

21 A Yes.

22 Q Do you hold any other titles or positions at
23 Pathfinder now?

24 A No.

25 Q Okay. And I believe you said that you've held

1 those positions since approximately 1991?

2 A It would have been a little before that. I'm not
3 sure exactly. A couple of years really before that.

4 Q Okay.

5 A But it was right in that area. I'm just not
6 positive.

7 Q Could you briefly describe for us your
8 responsibilities as the chief financial officer of
9 Pathfinder?

10 A Well, basically I'm responsible for the accounting
11 and finance function for the companies and everything to do
12 with those functions.

13 Q As the CFO, how many employees report directly to
14 you, Pathfinder employees, that is?

15 A I believe there is four. There is two
16 controllers, a corporate accountant and an information
17 systems coordinator.

18 Q I think you said earlier that there were
19 approximately 11 or 12 people in the business office?

20 A Yes.

21 Q How do those people report to you or relate to
22 you?

23 A Well, all of those people report to one of the
24 controllers directly, and indirectly to both controllers
25 that report to me.

1 Q So it would be fair to say that you have
2 responsibility for the entire business office?

3 A Yes.

4 Q Now, let me ask you about the general managers for
5 the various stations at Pathfinder.

6 Do those general managers report to you?

7 A No.

8 Q To whom do they report?

9 A John Dille and in WRBR's case, Dave Hicks.

10 Q So the general managers of the various Pathfinder
11 stations have a direct line reporting relationship to Mr.
12 Dille?

13 A Yes.

14 Q How about other what you might call station
15 employees, do they report to you or do they report to Mr.
16 Dille?

17 A Well, in most cases, all other station employees
18 report to the general manager or department heads that do
19 report to him. No other -- nobody at the radio station
20 reports directly to me or to anyone in my office.

21 There are some functions at the radio station that
22 are somewhat related to the accounting areas, such as the
23 billing is all done at the radio station, and that billing
24 is a byproduct of the traffic system, and that's done at the
25 radio station. So you might say they have an indirect or

1 some -- what I commonly refer to as a dotted line
2 responsibility to our office only because they are producing
3 data that we need to do the accounting, but nobody reports
4 to us directly, and no one else other than area even has a
5 dotted, would have a dotted line responsibility.

6 Q Would it be fair to say that the only Pathfinder
7 employees over which you have supervisory responsibility
8 work in the business office?

9 A Yes.

10 Q Let's talk for a moment about Pathfinder itself,
11 and here maybe we should discuss it in conjunction with
12 Booth since I understand both companies own radio stations.

13 How big a company -- well, let me break that down.
14 Let's just talk about Pathfinder for a moment.

15 How big a company is Pathfinder?

16 A Are you talking just Pathfinder now?

17 Q Yes.

18 A And when you say "how big," you mean in the way of
19 revenue?

20 Q Let's start with revenues.

21 A In the area of 12 mil.

22 Q \$12 million?

23 A In the area of 12 million.

24 Q Annually?

25 A Right. Gross revenue.

1 Q And at present how many radio stations is
2 Pathfinder the licensee for?

3 A Boy, I'm not sure. It's not that many, but some
4 of them are in the status of being LMA.

5 Q Just a rough guess.

6 A I think it's 12.

7 Q Pardon me?

8 A Eleven or 12.

9 Q Back in the 1993-1994 time frame, how many radio
10 stations was Pathfinder the licensee for?

11 A I don't think it was ever greater than 13, so it
12 was in that -- in that area, 12 to 13.

13 Q Now, Mr. Watson, are you familiar with the various
14 trade publications that from time to time rank the radio
15 station broadcast groups in terms of size? They typically
16 use either the number of stations or the revenues annually.

17 A I've seen them from time to time.

18 Q Where does Pathfinder fall in those relative
19 rankings?

20 A Not even in the same -- not even close. Certainly
21 toward the bottom of groups, we would be a very small group
22 in the country; very, very small.

23 Q How many radio stations does Truth Publishing own?

24 A Excuse me. When I was talking about the 11 to 12
25 or 12 to 13, I was including in that Truth Publishing

1 Company, which owns two stations.

2 Q Okay. So there are --

3 A I was kind of putting those in when I was thinking
4 about radio stations, because they own two stations that
5 happen to be in Tulsa, and then there one that Pathfinder
6 owns.

7 Q Okay. And so when you told us that Pathfinder
8 falls in the very small category of broadcast groups, were
9 you also including the Truth stations?

10 A Yes, I was.

11 Q So if we were to combine the Pathfinder stations
12 and the Truth stations, your answer would still be the same?

13 A Oh, we're a minute group compared to groups of
14 today.

15 Q Right. Let's discuss the Pathfinder/Booth Joint
16 Sales Agreement for a moment. That's a topic we've already
17 covered.

18 Did you play a role in the negotiation of that
19 Joint Sales Agreement?

20 A Well, I played a role from the standpoint as an
21 advisor to John on that agreement. He actually negotiated
22 the agreement with John Booth, the major points of it, and I
23 would advise John on certain things and worked with him on
24 certain things. I would have reviewed it, for example.

25 Q When did Pathfinder and Booth first enter into

1 this Joint Sales Agreement?

2 A I believe they actually entered into their joint
3 venture on September 1, 1992.

4 Q If you'd turn with me, please, to Mass Media
5 Bureau Exhibit No. 1. It's in that first binder. Page 14
6 is the beginning of this Joint Sales Agreement.

7 A Okay.

8 Q You will notice that it indicates the Joint Sales
9 Agreement was dated as of 18th of December, 1992.

10 Could you explain that for us, please?

11 A Well, I can't really explain it other than I know
12 that in details and in principle the agreement was worked
13 out by September 1st. I mean, all the details of the joint
14 venture were worked out. Booth and Pathfinder were
15 satisfied that they wanted to enter into it, and, in fact,
16 did go into actual operations September 1st.

17 I can only assume that the attorneys were slow on
18 the paperwork. I do remember that the draft of this
19 initially came -- the first draft came from Booth's
20 attorneys because they had done this before. They had
21 started one of these in another city or two. So that's all
22 I know.

23 Q Okay.

24 A And it actually got reduced to writing later than
25 when it started.

1 Q Okay. So you actually -- Pathfinder and Booth
2 actually commenced operations under the Joint Sales
3 Agreement as of roughly September 1993 but the document
4 didn't get formalized until some months later; is that
5 correct?

6 A Yes, I --

7 MR. SHOOK: Counsel, do you member September '92?

8 MR. GUZMAN: Pardon me. 1992.

9 THE WITNESS: Yes, I think it's -- I mean, it was
10 rather -- at that point everybody was satisfied with the
11 details of it was going to work, and they commenced. I
12 think it was -- I mean, you might say it was kind of an
13 informal arrangement until this came off.

14 BY MR. GUZMAN:

15 Q Do you remember whether there was any hesitancy on
16 the part of the parties to begin a Joint Sales Agreement
17 without an actual written agreement in place?

18 A No, I don't think so, not once the principles of
19 the thing were ironed out and once everyone pretty much
20 understood how it was going to work.

21 Q Could you describe for us why it was that
22 Pathfinder entered into this Joint Sales Agreement with
23 Booth?

24 A Well, I think -- I think both parties -- I
25 believe, I'm not positive, but I believe Booth came to

1 Pathfinder and kind of talked about this idea. When I say
2 Pathfinder, at that time came to John and talked about this
3 idea. And both parties were intrigued by the idea because
4 of two things. They thought that due to the joint venture
5 they could increase sales, both locally and nationally, and
6 combine their sales force, and then by combining their sales
7 force then some other things having to do with the joint
8 sales venture, they could reduce costs.

9 So it was -- that was the main thing: to increase
10 revenues local and national, and reduce costs also.

11 Q And could you describe for us, please, just
12 briefly the essence of this Joint Sales Agreement with
13 Booth; that is, the operative combination?

14 A Well, basically there are -- basically, it
15 included all of the revenues for both entities except for
16 political, it included all the revenues, and then there were
17 certain expenses that were identified as the joint venture
18 expenses, and those were basically consolidated. And they
19 also -- in essence, the way it was thought of at first is
20 that both entities, Pathfinder and Booth, would combine
21 their sales force, and by combining their sales force they
22 could actually have less salespeople on the street;
23 therefore reducing cost. And then by selling the radio
24 stations in a combined sale, such as selling both stations
25 at once to one advertiser, they could actually increase

1 revenues.

2 Q Other than the sales staffs, were there any other
3 combined functions in this JSA with Booth?

4 A Yes. At that time they combined the traffic
5 position which, again, schedules the commercials to be aired
6 and also there was the billing clerk position, production,
7 what's called production continuity person, a person that
8 did strictly producing the commercial and writing
9 commercials for the stations, and then the combined sales
10 staffs, and also not initially, but at a later point the
11 general sales manager was another position.

12 Q The JSA with Booth also makes reference to some
13 possibility of combined administrative sales support.

14 Was that also part of the combination?

15 A Excuse me. There also would have been -- at
16 whatever point, and I know there was at some point, a sales
17 secretary, for example, and anybody supporting this sales
18 effort actually would have been a venture employee and
19 therefore split.

20 Q Let me draw your attention to Section 2.5,
21 paragraph A. It's on page 2 of the agreement. That
22 paragraph makes reference to both Booth and Pathfinder
23 designating certain of their mutually agreed upon employees
24 to become employees of the venture.

25 Do you see that?

1 A Yes, I do.

2 Q Did it actually happen that way?

3 A No, not exactly.

4 I know that that's certainly what Pathfinder
5 thought it was going to be going into it, but it wasn't
6 quite like that.

7 Q Well, did Pathfinder designate certain employees
8 to be employees of the venture?

9 A Yes, and it was basically people that were already
10 on their staff: their sales force, traffic person, billing
11 clerk, production continuity, and I don't know. I can't
12 remember if at that moment there was a sales secretary or
13 not. I know there was eventually.

14 Q And just to be clear so that I understand it, or
15 as I understand it, these employees, although they were
16 designated to become employees of the venture, actually
17 remained Pathfinder employees since Pathfinder is
18 administering the joint venture?

19 A They were Pathfinder employees, correct.

20 Q Now, what about from Booth's side; did Booth
21 designate some employees to become employees of the venture?

22 A Yes. However, it didn't quite happen the way we
23 thought it would.

24 Booth, I don't know if it was -- it was some time
25 where they just come up with this, but at some point in time

1 Booth thought that since they were terminating their
2 employees, they considered terminating them from Booth, and
3 they were becoming employees of Pathfinder. They felt that
4 they had to offer these people a severance pay because they
5 were terminating them. And it turned out that the severance
6 package for the salespeople were so lucrative that all but
7 one of these people took their severance package and
8 actually didn't come to work for the joint venture.

9 So as it turned out, out of all their salespeople,
10 only one came to work for the venture.

11 Q Only one Booth sales --

12 A Only one of Booth salespersons. All the rest
13 terminated and I don't know what happened to them.

14 Q So did you then have to hire more sales staff for
15 the venture?

16 A Oh, yes. I mean, that was the predicament right
17 off the bat was that they were -- they had too few
18 salespeople, and they were immediately put in a position to
19 have to go looking for salespeople.

20 Q Let me refer you to Section 3.1 of this agreement.
21 That's entitled "Management Committee."

22 I believe you testified earlier that this
23 management committee, which was supposed to have been
24 comprised of two members from Booth and two members from
25 Pathfinder, was never formed.

1 A Not to my knowledge. There never was a management
2 meeting. I know of none.

3 Q Do you know why that was?

4 A Well, I don't really know. I think I mentioned
5 before that both of the parties, you know, got along okay.
6 There was problems with the sales, but it wasn't problems
7 between the parties. They knew what those problems were and
8 we didn't feel there was a need.

9 The only other thing I can think of as a reason
10 might have been, I think it's supplemental, but if you
11 recall, we started this on September 1st, and the actual
12 document was signed on December 18th or the 22nd. I can't
13 remember even now which date it was. But the point is is
14 the document eventually got caught up with the joint sales
15 venture too much later, and by that time it was under
16 operation.

17 I think, had there been problems between the
18 parties, they would have fallen back to the strict letter of
19 the document.

20 Q Let me refer you to Section 4.4 -- let's just look
21 at Section 4 generally. This is entitled "Sharing of
22 Revenue and Expenses."

23 As I understand the document, in the first year of
24 operation, that is, in Booth's and Pathfinder's first year
25 of joint operation, the revenues and expenses of the venture

1 were supposed to be split 50/50; is that right?

2 A That's correct.

3 Q What happens in the second through fifth years?

4 A On September 1st calls for 4.2, it calls for the
5 joint venture's revenues and the joint venture's expenses to
6 be shared based on the results of that formula, and that
7 formula is basically a rating base formula. It has to do
8 with how each station does in the Arbitron ratings, and you
9 do that computation and the results of it is the way the
10 joint venture splits their revenues and expenses for the
11 next upcoming year, September 1st through August 31st.

12 Q Okay.

13 MR. GUZMAN: Your Honor, we've brought an easel
14 with a pad and paper. And I thought it might be informative
15 and help us all understand it if Mr. Watson were to draw on
16 that and explain how revenues were shared and how expenses
17 were shared under the Joint Sales Agreement, if that's
18 agreeable to you.

19 JUDGE CHACHKIN: Any objection?

20 MR. SHOOK: No objection, Your Honor.

21 JUDGE CHACHKIN: All right.

22 (Pause.)

23 THE WITNESS: My penmanship is bad. You've seen
24 my initials, you've seen my squiggles.

25 I happen to have drawn this out so it wouldn't

1 take quite as long to put it up there.

2 Let's start over here.

3 MR. GUZMAN: Bob, you might want to go just a
4 little bit bigger if you could.

5 THE WITNESS: Okay, I'll try.

6 MR. GUZMAN: I think it's fine. Turn it, you
7 should turn it so the Judge --

8 THE WITNESS: This way?

9 JUDGE CHACHKIN: That's good.

10 MR. GUZMAN: Bob, if you could just move it a
11 little bit, that would be helpful.

12 THE WITNESS: Okay. Now, I've put some columns
13 across the top and then we'll fill in the numbers. Just
14 bear with me while I write this out.

15 (Pause.)

16 THE WITNESS: Almost done here.

17 (Pause.)

18 THE WITNESS: Okay.

19 MR. GUZMAN: Okay, seeing you draw that reminded
20 me why I couldn't sit in the back in law school anymore.

21 THE WITNESS: I hope everybody can see it.

22 JUDGE CHACHKIN: As long as you stand away from
23 it.

24 (Laughter.)

25 THE WITNESS: Sorry. Let me stand over here.

1 Now, everybody has moved over. Okay?

2 MR. GUZMAN: That's great.

3 THE WITNESS: Can I just go through an example?

4 MR. GUZMAN: That would be fine.

5 BY MR. GUZMAN:

6 Q Why don't you take an easy example? You know, use
7 \$10.00 of revenue, \$80.00 of expenses, something like that.

8 A Okay. All right.

9 Basically, the joint venture, if you look at it in
10 total, they sell, and this is one month, by the way, a
11 typical month. Unfortunately, it's too much like some of
12 the typical months early on.

13 \$10.00 were the joint venture's revenues, the
14 joint venture's expenses, all the expenses that were
15 identified as joint venture expenses was \$80.00, and that
16 resulted in actually \$20.00. of what I've referred to here
17 as net revenue of the venture.

18 The way this was split in accordance with the
19 agreement starting September 1, 1992, and thereafter
20 according to the formula in, I believe, 4.2, the first year
21 of operation was 50/50. And that meant that Pathfinder got
22 50 percent of those revenues, or in this case, \$50.00.
23 Booth got \$50.00.

24 Now, if you look here -- well, let's just follow
25 on down first. The joint -- they also split joint venture

1 expenses; in which case they each got \$40.00 worth of
2 expenses. That resulted in \$10.00 each of net revenue, that
3 venture revenue, okay?

4 Now, let's take this element over here, and what
5 I've shown here is this called a Pathfinder payable or
6 receivable from Booth, and I'll show you how these revenues
7 and the various expenses of the venture got recorded on
8 Pathfinder's books, and the reciprocal then got recorded on
9 Booth's books.

10 In this case, since Pathfinder recorded on
11 their -- they recorded -- excuse me. The recorded all of
12 the receivables on their books for this \$10.00 worth of
13 revenue. And since they recorded -- Pathfinder by recording
14 this owes Booth \$50.00. So they don't -- whenever there is
15 revenue involved, it becomes a payable. Why don't I put,
16 for purposes of that let's put -- it becomes a payable of
17 Pathfinder. So in this case Pathfinder owed Booth \$50.00.

18 Q And that represents Booth's share of the joint
19 venture revenue?

20 A Booth's share of the joint venture revenue, and
21 therefore upon recording that revenue Pathfinder owed it to
22 them.

23 Now, of the expenses, that represents every time,
24 every time Pathfinder paid these expenses 50 percent of them
25 became a receivable from Booth. Booth owed Pathfinder

1 because Pathfinder had paid them, and so that was a
2 receivable. I'll leave that as a positive number as opposed
3 to a negative number.

4 The net for the month, the net receivable or
5 payable, and in this case it's a payable, is \$10.00, that
6 Pathfinder has payable to Booth on their books for \$10.00,
7 and that's the month. Assuming that it was zero at the
8 beginning of the month, it would be \$10.00 for that month.
9 Likewise, on Booth's books they have a \$10.00 receivable,
10 and that's just a straightforward and fairly simple
11 explanation but this is how it worked.

12 Q Now let's look at the revenue line first, the
13 joint venture revenue. \$100 comes in, \$50 of it belongs to
14 Pathfinder -- \$50 belongs to Booth. Who's administering all
15 the accounting under this agreement at this point in time?

16 A Pathfinder is doing all the accounting for the
17 joint venture. I think it was required in -- it was
18 required as part of the deal.

19 Q And is that why then you list there being
20 payable to Booth a \$50 under joint venture revenue?

21 A Well, there's more accounting to it than just
22 the list. I mean, this was part of it, but, yes, we had to
23 provide an accounting, in particular, the financial
24 statement of the joint venture.

25 Q Okay, just focusing on this chart here.

1 Booth -- \$50 of revenue because \$100 of revenue became in
2 the joint venture.

3 A That's correct.

4 Q Now, at that point in time was there any
5 provision in the agreement for payment of interest or
6 anything like that?

7 A Well, no, there wasn't.

8 Q Okay. Now dropping down to the next line,
9 "Joint Venture Expenses." There's \$80 of expenses in this
10 example, \$40 of which are allocated to Pathfinder, \$40 of
11 which are allocated to Booth, and I take it then that Booth
12 had it payable to Pathfinder for its share of those
13 expenses. Is that what you're showing?

14 A That is correct. They're a reciprocal of this
15 receivable and Pathfinder's book is a payable. Keep in mind
16 that both entities are recording both of these in any given
17 month. They're not just recording -- they're recording both
18 revenues and expenses.

19 Q And as relates to this \$40 payable from Booth
20 to Pathfinder, is there any provision for Booth to pay
21 interest to Pathfinder or anything like that?

22 A No.

23 Q And let's drop down to the final line, the net
24 revenue of the venture line. There's \$20 total in this
25 example, \$10 of which goes to Pathfinder, \$10 of which goes

1 to Booth, meaning that at the end of the day the venture
2 where Pathfinder owes Booth \$10. Is that right?

3 A That is correct.

4 Q How is that \$10 supposed to be paid under the
5 joint sales agreement with Booth?

6 A Those \$10 actually got paid to them in
7 accordance with some provision. I think those days were 55
8 and 70.

9 Q Um-hmm.

10 A Is that correct?

11 A Yes, let me refer you specifically to Section 4.4
12 of the Joint Sales Agreement.

13 A Yes, that -- okay. That got paid -- that \$10.00
14 got paid in two installments to Booth. One-half of it,
15 \$5.00, got paid at the fifty-fifth day, and the other half
16 got paid on the seventieth day.

17 Q Okay, so it's paid in two installments.

18 Why 55 days? Is that 55 days after the bill goes
19 out to the advertiser or is that 55 days after the money
20 comes in to the Pathfinder accounts?

21 A No, it's 55 days after the end of the month in
22 which that revenue was recorded.

23 Q Okay.

24 A Not necessarily billed to the advertiser or
25 anything. It was just 55 days after the end of the month.

1 Q Okay. And why the -- why the lag time?

2 A It was thought at that time that they were -- they
3 were trying to allow some time for payment, some time for
4 all the accounts receivable to be collected by Pathfinder so
5 that they could -- before they would make the payment to
6 them.

7 Unfortunately, had I -- had I had another shot at
8 advising John and negotiating this, I would have made it a
9 lot longer than that.

10 Q Why do you say that?

11 A Well, I just didn't -- there is no way that 100
12 percent of that revenue is recorded -- is actually collected
13 in 55 to 70 days. I mean, it's just not long enough.

14 Traditionally, in the broadcast industry, it takes
15 longer than that to collect a receivable. I mean, it really
16 does. And so we were, in effect, paying them when we really
17 hadn't collected all the money.

18 Q Okay. So if I understand Section 4.4, what it
19 provides for is that in this example the \$10.00 was owed to
20 Booth, it provides that \$10.00 will be paid in equal
21 installments, one of the fifty-fifth day following the
22 billing cycle and the other on the seventieth day following
23 the billing cycle; is that correct?

24 A I think it's the following month.

25 Q The following month?

1 A Yeah, because the billing could have been -- the
2 billing actually went out, not to confuse it anymore, but it
3 went out at the end of the advertising schedule. And if an
4 advertising schedule ended in week one of the month, the
5 bill went out, but it didn't matter. This was paid on the
6 fiftieth-day after the month in which the -- month in which
7 the revenue was recorded, not necessarily when you handed
8 him with his bill.

9 Q Okay. Was there any provision for the payment of
10 interest given that there is a fairly significant lag time
11 between the time when these revenues are put on the books
12 and when they actually get paid to Booth?

13 A No.

14 Q I'm going to direct your attention to the last
15 portion of Section 4.4(a). The last two sentences -- the
16 first of the last two sentences begins, "If expenses exceed
17 revenues by \$5,000 or less."

18 Do you see that?

19 A Yes.

20 Q I'm not sure I totally understand this but what it
21 suggests to me is that if expenses of the venture exceed
22 revenues, that's the scenario it covers. In other words, it
23 would be the reverse of this example you have drawn for us
24 here.

25 A That's correct.

1 Q Right?

2 A That's correct.

3 Q Okay. Well, if those expenses in the venture
4 exceed the revenues of the ventures by \$5,000 or less in any
5 given month, it then say that Booth share those expense,
6 shall be offset against Booth's share of the revenues in the
7 following month.

8 Could you put that in simpler terms for us,
9 please?

10 A Yes, would you like me to show you?

11 Q Sure, that would be fine.

12 A Let's just -- instead of these numbers say that
13 the joint -- that the venture's revenue in this case was --
14 let's call it 70 -- it was \$74.00.

15 MR. JOHNSON: Bob, can you work from this side so
16 Judge Chachkin can see?

17 THE WITNESS: Sure. I can't write with my left
18 hand.

19 Okay, let's just say the venture's revenue is
20 \$74.00. That means that each station shares in \$37.00,
21 right? That means that the payable to Booth becomes their
22 share, \$37.00.

23 Let's just say that -- excuse me. May I change
24 this example a little bit? It works a little bit better if
25 I had used 68. Okay, if there was \$68.00, their share would

1 have been 34 each, right? Let's just say -- let's change
2 the expenses here to -- let's change the expenses here to
3 70, please. That means it's 35 and 35. That means that in
4 this case there was a payable to them for \$37.00.

5 Let's make this \$76.00. Make this -- yeah, that
6 would make it 38, 38, 38. So there was a \$37.00 payable from
7 Pathfinder to Booth for \$37.00. There is a receivable from
8 them for \$38.00, their share of venture's expenses. In
9 which case, at this time Booth owes Pathfinder \$1.00. Is
10 that correct?

11 MR. GUZMAN: Right.

12 THE WITNESS: Okay. Assuming this was -- and
13 since it was less than \$5,000?

14 MR. GUZMAN: Um-hmm.

15 BY MR. GUZMAN:

16 Q So how does that get paid to Pathfinder? Booth
17 owes Pathfinder \$1.00 because the revenues of the dollar
18 were less than the expenses of the venture in that month.

19 A That's right.

20 Q And they were less than -- the revenues were less
21 than the expenses by \$1.00.

22 A That's right.

23 Q How does Booth pay that \$1.00 to Pathfinder?

24 A Since it was less than \$5,000, it merely stayed
25 there and rode to the next month. Nothing happened. They

1 didn't pay it. You went and added it to your -- or
2 accumulated with next month's, how the next month came out.

3 Q Okay. Now, Section 4.4(a) in this portion says
4 that Booth's share of those expenses, that is, the expenses
5 that exceed revenues, shall be offset against Booth's share
6 of the following month's revenues.

7 I take it that at least theoretically this \$1.00
8 could carry forward for quite some time until Booth actually
9 has revenues owing it that offset that \$1.00?

10 A It could carry forward -- it could carry forward
11 until the balance they owed us was over \$5,000.

12 Q Right.

13 A Correct.

14 Q But take an example, if in the next month Booth's
15 share was again negative \$1.00 --

16 A Right.

17 Q -- under the joint venture.

18 A That would have been now a negative of \$2.00.

19 Q Right. So Both would owe Pathfinder \$2.00, the
20 original dollar plus the new \$1.00 lost for the second
21 month?

22 A That is correct, and still no payment would have
23 come to Pathfinder.

24 Q Okay. Now, is there anything under the Joint
25 Sales Agreement with Booth that provides for Booth to pay

1 interest to Pathfinder for this money that it owes
2 Pathfinder?

3 A No.

4 Q Okay. Let me refer you to Section 5 of the Joint
5 Sales Agreement with Booth. Under Section 5.2, that's
6 entitled "Accounting Support," what was the accounting
7 support that Pathfinder provided to Booth under the Joint
8 Sales Agreement?

9 A Well, they had to account -- they had to do these
10 charts here -- not really. But we had to put together a
11 financial statement for the venture every month that
12 actually showed what the revenues were. We had to count for
13 all revenues in the proper category, just like you do for a
14 radio station, proper category, bill them. All the expenses
15 got put into the property chart of accounts, proper
16 accounts. All of the bills got paid, that were joint
17 venture bills got paid by Pathfinder. All of the
18 allocations of the people relating to the joint venture had
19 to be properly allocated, and including payroll taxes,
20 employee benefits, salaries; just had to show the accounting
21 for the joint venture every month. Show it, do it and show
22 it.

23 Q Okay. So Pathfinder for Booth kept the books
24 relating to the joint venture; is that right?

25 A Yes, sir.

1 Q And Pathfinder prepared a monthly financial
2 statement for Booth relating to the joint venture?

3 A Yes.

4 Q And Pathfinder paid the sales-related expenses for
5 Booth that related to the joint venture?

6 A They paid all joint venture expenses; anything to
7 do with -- any expenses related to the joint venture got
8 paid by Pathfinder.

9 Q Okay. Was it on a Pathfinder check?

10 A Yes.

11 Q And as I understood it, you said that Pathfinder
12 actually employed the employees of the joint venture; is
13 that correct?

14 A Yes, but they were -- they were looked at as
15 shared employees, I mean, at that point. They worked for
16 the venture, but they were shared.

17 Q Understood. And what would the paycheck look like
18 that these shared employees received?

19 A They were on a -- they were on a payroll
20 administered by Pathfinder.

21 Q So it was a Pathfinder check?

22 A Yes; including W-2s and everything.

23 Q Perhaps some of this is redundant, but Section
24 5.3, it's entitled "Books and Account of Records." I
25 understand that this section provides that Pathfinder on

1 behalf of Booth would keep all the books and records of the
2 venture; is that correct?

3 A That's correct. That goes into some more detail
4 than 5.2, of course. Right.

5 Q Finally, let me refer you to Section 12.7 of this
6 Joint Sales Agreement.

7 A 12.7, Mike?

8 Q 12.7. This is the notice section. It provides
9 for notice to Booth and notice to Mr. John Dille on behalf
10 of Pathfinder.

11 Who is John Quale?

12 A John Quale was Booth American's legal counsel at
13 Wiley Ryan.

14 Q And as of this time, December 1992, what's the
15 relationship of Alan Campbell and Pathfinder?

16 A That was Pathfinder's FCC counsel.

17 Q Is it your understanding that the FCC counsel for
18 Booth and for Pathfinder both approved of this arrangement
19 embodied in the Joint Sales Agreement?

20 A Oh, yes, absolutely.

21 Q Let's turn away from the document a little bit.

22 What was Pathfinder's actual experience with Booth
23 under the Joint Sales Agreement?

24 A Well, it wasn't very good. It wasn't at all what
25 it was expected to be at first. As I mentioned to you, only

1 one salesperson came over from WRBR, and, frankly, sales
2 weren't what they were expected to be, what either side
3 anticipated them being. There was a lot of struggle in
4 getting the sales department -- this is what I saw and was
5 told -- getting it right, getting the right number of
6 salespeople, getting the right mix of veterans, veterans,
7 account executives, and I think there was some problems in
8 the management, who was actually running that joint venture
9 for both companies. There was some question there, serious
10 questions on their goal.

11 And I think also at that time there may have been
12 efforts to actually save costs, save salespeople. As it
13 turned out, combined selling, selling both stations combined
14 did not work out very well. Not just with our -- with this
15 joint venture, but nationally and around the country. I
16 think it was generally determined that you had to split --
17 excuse me. You had to focus on one station at a time when
18 you were selling it, not trying to sell both of them at the
19 same time.

20 So I know that was the case, and so we had a lot,
21 we struggled a lot with sales, although on the other hand
22 the cost savings were fairly immediate. I mean, the
23 combining of operations of the joint salespeople, people
24 under joint sale expense -- joint venture was immediate. I
25 mean, the savings on the billing clerk, the traffic, the

1 continuity, and those -- so there was significant savings
2 immediately in that regard.

3 Q All right, so the cost savings were immediate. On
4 the sales side you needed some fine tuning, some
5 experimentation. Is that fair?

6 A Considerable fine tuning on the sales area, yes.

7 Q So not so fine tuning --

8 A Unfortunately, it took longer than everyone would
9 have liked.

10 Q Did any of those problems cause Pathfinder not to
11 want to continue with the Joint Sales Agreement at this
12 time?

13 A No, not at all. I mean, first of all, you still
14 had the cost savings, and, you know, I think everyone in
15 management at least, I mean, whoever was running it,
16 management saw what the problems were and they were going to
17 fix them, including the management.

18 Q Okay. Did Pathfinder ever propose further cost
19 savings or further integration with Booth to Booth?

20 A Yes.

21 Q What were those?

22 A All I'm aware of is in -- generally in the spring
23 of 1993, I know John had discussions with John Booth
24 regarding some additional expenses that could be shared and
25 combined, particularly if they became co-located. If they

1 could co-locate their places, there was other expenses
2 outside of the JSA that could -- could be shared. And at
3 that time also I believe John discussed the fact that they
4 could share a general manager, or that if they could share a
5 general manager it would certainly be a cost savings
6 involved there.

7 Q Okay.

8 MR. GUZMAN: Your Honor, at this time Pathfinder
9 would move for the admission of the Joint Sales Agreement.
10 That's Mass Media Bureau Exhibit 1.

11 JUDGE CHACHKIN: Isn't it in? It's not in
12 evidence?

13 MR. SHOOK: No, we haven't gotten to that point of
14 offering it, but we certainly don't mind.

15 MR. GUZMAN: Page 14 to 30.

16 JUDGE CHACHKIN: No objection, I assume.

17 MR. SHOOK: No.

18 JUDGE CHACHKIN: Pages 14 to 30 is received.

19 (The document referred to,
20 having been previously marked
21 for identification as MMB
22 Exhibit No. 1, pages 14
23 through 30 were received into
24 evidence.)

25 BY MR. GUZMAN:

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1 Q Now, with respect to this are of integration, let
2 me refer you to Mass Media Bureau Exhibit No. 6. That's in
3 their second volume.

4 Now, you've testified about this document before,
5 and if I recall, this is a letter or a memo from John Dille
6 to John Booth, and if I recall, you said you did not see it
7 at the time.

8 Do you remember that?

9 A I don't believe that I did see it at the time,
10 although I think I did testify that I recall maybe talking
11 to John about some of the subject matter in it.

12 Q Okay. Well, on page 2, about the bottom third of
13 the page there is a heading "Co-located Facilities."

14 A Right.

15 Q You've testified that you were aware that John
16 proposed co-location to John Booth; is that right?

17 A Yes.

18 Q And this is just simply a reflection of that
19 proposal?

20 A Yes, it is.

21 Q Similarly, on page 4 there is a series of numbered
22 items?

23 A Yes.

24 Q Number item two, as I read it, it a proposal to
25 have a common general manager of the two stations.

1 A Yes.

2 Q Is that the way you read that?

3 A Yes, that is what I -- that's the -- that's what
4 I'm thinking about when I say in the spring of '93. I think
5 this is the discussions regarding that, that proposal to
6 John Booth that John made in this letter.

7 Q Now, as you understand it, what was Booth's
8 response to these proposals for further integration?

9 A Well, I seem to recall that he was -- that he was
10 fairly receptive to them, to the ideas. However, it wasn't
11 too long after that that he decided to sell the station. So
12 I mean, I don't know exactly when after but not too long
13 that he decided to sell the station. Of course, he had no
14 more interest in -- he had very low interest in any of the
15 JSA or anything else from that point forward.

16 MR. GUZMAN: Your Honor, this completes my
17 questioning relating to the Joint Sales Agreement. If you
18 would like, I can start a new topic or if you would like --

19 JUDGE CHACHKIN: No, no, we'll recess until
20 tomorrow at nine a.m.

21 MR. GUZMAN: Thank you, Your Honor.

22 (Whereupon, at 4:00 p.m., the hearing was
23 recessed, to resume at 9:00 a.m., on Tuesday, October 26,
24 1998.)

25

REPORTER'S CERTIFICATE

FCC DOCKET NO.: 98-66
CASE TITLE: IN RE: HICKS BROADCASTING
HEARING DATE: October 26, 1998
LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.

Date: 10-26-98
George Holmes [Signature]
Official Reporter
Heritage Reporting Corporation
1220 "L" Street, N.W.
Washington, D.C. 20005

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I hereby certify that the proceedings and evidence were fully and accurately transcribed from the tapes and notes provided by the above named reporter in the above case before the Federal Communications Commission.

Date: 10-26-98
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I hereby certify that the transcript of the proceedings and evidence in the above referenced case that was held before the Federal Communications Commission was proofread on the date specified below.

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